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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/375,451	08/17/1999	GUY L. MCCLUNG III	GLM-III	5100

7590

03/01/2002

GUY L MCCLUNG  
III SUITE 347  
16690 CHAMPION FOREST DRIVE  
SPRING, TX 773797023

EXAMINER

ALVAREZ, RAQUEL

ART UNIT

PAPER NUMBER

2162

DATE MAILED: 03/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/375,451

Applicant(s)

MCCLUNG III, GUY L.

Examiner

Raquel Alvarez

Art Unit

2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3,5-8. 6) ☒ Other: IDS 10-12,14-21.

### **DETAILED ACTION**

1. Claims 1-20 were cancelled by preliminary amendment filed on 5/19/2000.
2. Claims 21-37 are presented for examination.

#### **Information Disclosure Statement**

3. The information disclosure statement filed 11/10/99, paper#4 and statement filed 5/15/2000, paper #13 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered.

#### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 21-23, 26-33, 35 rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al,(6,249,772 hereinafter Walker).

With respect to claims 21, 23, 26-28, 30-33, 35 and 37, Walker teaches guaranteeing a consumer a best price on an item purchased in a first transaction at a first price (Abstract). Recording the first price and information identifying the consumer (i.e. the customer is charged a store price )(col. 22, lines 11-33); monitoring the sales price of the item (i.e. the central controller matches the store prices to the established

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price)(col. 22, lines 11-33); noting any price lower than the first price (col. 22, lines 11-33); calculating a money-value difference between the first price and said any price lower than the first price (col. 22, lines 11-33); refunding to the consumer an amount equal to the money-value difference (i.e. the customer is refunded the difference between the a store price and the established price)(col. 22, lines 11-33); wherein the item is purchased via a host system and the host system records the first price and information identifying the customer; the host system conducts the monitoring, noting, and calculating steps; and the host system provides the refund to the consumer (Col. 22, lines 11-33); and wherein the host system provides the refund by crediting an account of the consumer (col. 22, lines 11-33).

With respect to claims 22 , Walker further teaches that the item is purchased by the consumer at a location of the vendor (Figure 8B).

With respect to claim 29, Walker teaches that only items for sale in a pertinent geographic area are taken into account in the noting step (Figures 6B-6C).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 24, 25, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al.(6,249,772 hereinafter Walker).

With respect to claim 24, Walker does not specifically teach that the account is an account of the consumer with the host system. It is obvious and well known to keep an account with the host to obtain the advantages of purchasing through the host system. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included an account with the host system for the above mentioned advantages.

Claim 25 further recites that a refund is made for each subsequent sales price lower than the first price. Since, walker teaches guaranteeing a consumer the best prices then it would have been obvious to a person of ordinary skill in the art to refund the consumers for each subsequent sales price lower than the first price because such a modification would allow the customer to get the lowest price each time the product is purchased.

Claim 34 further recites duplicating any incentive accompanying sales of the item after the first transaction. Official notice is taken that is old and well known to duplicate an incentive of the item after an item has been purchased in order to further motivate customers to purchase the item. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included duplicating any incentive accompanying sales of the item after the transaction for the above mentioned advantages.

Claim 36 further recites providing a warranty to the consumer. Since, Walker is a system and method pf selling an item and like any conventional method of selling a product often provides a warranty on the item purchased in order to assure the

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customer the integrity of a product and of the maker's responsibility for the repair or replacement of defective parts. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included providing a warranty to the consumer for the above mentioned advantages.

**Conclusion**

**6.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

A. Pallakoff (6,269,343) disclosed an on-line marketing system and method that allows sellers to communicate conditional offers to potential buyers. The conditions include prices that depend on the aggregate amount of goods or services that buyers collectively agree to purchase by a given time and date.

B. Giuliani et al.(5,974,399) disclosed a method and apparatus that identifies promoted or competitive products in a consumer's order, and selects an incentive that is appropriate for the price differential between the promoted and the competitive items, and for the purchase choice already made between the promoted and competitive items.

C. "Office Depot Online" disclosed a 155% low price guarantee offered on catalog and on store purchases.

D. Peiffer, "Compliance No Exceptions For Government Contractors" disclosed offering government discount from list price that is equal to the discount offered the supplier's most favored customers. If the government believes it was overcharged because it relied on defective data, it will request a refund.

E. "Circuit City Stores" disclosed a low-price guarantee, if the customer finds a lower price within 30 days after purchase, Circuit City will refund the difference plus 10 percent.

F. "Montgomery Ward at its fighting weight" disclosed a 30 day price guarantee that will pay the difference plus 10% if a consumer finds a lower price on the same item in the period.

G. Halvereson, "Tops touts subdued attitude" disclosed a 45-day lowest-price guarantee, promising that the products it advertised would be in stock, offering either a rain check or a product upgrade if not.

**Point of contact**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (703)305-0456. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric w Stamber can be reached on (703)305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are (703)746-7239 for regular communications and (703)746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.



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